

Attachment 3 - zSeries & Passport Advantage Software Inventory & Agreements

International Passport Advantage Agreement
International Program License Agreement (IPLA)
zSeries Inventory as of 06/25/2009
Passport Advantage Inventory as of 06/25/2009



International Passport Advantage Agreement

Part 1 - General Terms

Under this IBM International Passport Advantage Agreement ("Agreement"), IBM provides the Passport Advantage customer a way to obtain authorizations to use, update, and support selected Programs at volume pricing.

The Customer Originating Company and IBM Originating Company agree to coordinate the administration of this Agreement within their respective Enterprises. When used in this Agreement, "IBM" means the IBM Enterprise company that is providing Eligible Products, and "you" means the customer Enterprise company that is ordering them, subject to the Agreement. The Customer Originating Company is the legal entity within your Enterprise of which the entity that identifies itself as the "Originating Site" on an IBM International Passport Advantage Enrollment Form is a part. The IBM Originating Company is the legal entity within International Business Machines Corporation's Enterprise that accepts the Customer Originating Company's orders. This Agreement is entered into with the understanding that each of us is bound by its terms. Both of us agree to distribute copies of the Agreement to our respective participating Enterprise companies. "Enterprise" is defined in **2. Enterprise** below.

Products eligible under this Agreement ("Eligible Products") include commercially available IBM Programs, certain Programs that are subject to a third-party end user license agreement ("Non-IBM Programs"), Support for specified Non-IBM Programs and IBM Programs licensed under the terms of the IBM License for Non-Warranted Programs ("Selected Support"), authorizations to increase your use of a Program, IBM Trade-ups, Competitive Trade-ups, IBM Annual Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Third Party Annual Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, and Selected Support renewals.

The Customer Originating Company accepts the terms of this Agreement without modification, and each of its participating Enterprise companies accepts this Agreement without modification, by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to obtain Eligible Products ("your reseller(s)"), as applicable. This Agreement is effective on the date IBM accepts your initial order for Eligible Products ("Effective Date") and remains in effect until the Customer Originating Company or the IBM Originating Company terminates it in accordance with **11. Agreement Termination**.

This Agreement, any applicable attachments, and any associated documents, i.e., Enrollment Form, Proofs of Entitlement and invoices (called "Associated Documents"), are the complete agreement regarding these transactions, and replace any prior oral or written communications between us concerning Passport Advantage. If there is a conflict among terms in the various documents, those of an attachment prevail over this Agreement and those of an Associated Document prevail over both of those documents. The terms of the sections of the IBM International Program License Agreement ("IPLA") entitled "Limitation of Liability," "General," and "Governing Law, Jurisdiction, and Arbitration," including their applicable Country-unique Terms, are also part of this Agreement and are incorporated by reference into this Agreement with the following changes:

- a. The term "Program" is replaced by the term "Eligible Product."
- b. If not otherwise stated in the Limitation of Liability section of the IPLA, the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim for a fixed term license is 12 months' charges.
- c. The statement, "All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license" is replaced by the statement, "The rights, duties, and obligations of each of us are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the Eligible Product is placed in productive use," except that all licenses are valid as specifically granted.
- d. The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by "the laws of the country in which the transaction is performed."

A copy of the IPLA in its entirety, either in a booklet or on a CD, is provided in the Passport Advantage Welcome Package. It is also available from IBM or its resellers and on the Internet at ibm.com/software/sla.

Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or an Associated Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

If IBM withdraws an Eligible Product from marketing, you will no longer be able to obtain it under this Agreement. If IBM withdraws a Program or a version of a Program from marketing, you may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM's prior written consent, which IBM will not unreasonably withhold.

The "Anniversary" is the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

A "Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Term" is the period that begins either on the date IBM accepts your initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

1. Eligible Products

Eligible Products are for use within your Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void. In addition, such Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties. If, as a result of your moving an Eligible Product across a border, any authority imposes a duty, tax, levy or fee (including withholding taxes, fees, customs or other duties for the import and export of any such Eligible Product), then you agree that you are responsible for, and will pay, any such duty, taxes, levy or other fees. This excludes those taxes based on IBM's net income.

Unless IBM specifies otherwise, it provides Non-IBM Programs and Third Party Software Subscription and Support (as defined in 1.3.1 Software Subscription and Support below) **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you.

1.1 IBM Programs

1.1.1 Proof of Entitlement:

IBM specifies a Program's authorized use in a Proof of Entitlement (called "PoE"). Examples of the measure of the level of authorized use include, but are not limited to, the number of copies, processors, or users. This PoE, supported by your matching paid invoice or receipt, is evidence of your level of authorized use. During the period this Agreement remains in effect, and for two years thereafter, IBM has the right to verify your compliance with this Agreement on your premises during your normal business hours and in a manner that minimizes disruption to your business. IBM may use an independent auditor for this with your prior approval, which you will not unreasonably withhold.

1.1.2 Versions and Platforms:

You may use Programs and their associated user documentation in any commercially available national language version up to the level of use authorized in the PoE. You are authorized to use the Program(s) that you obtain under this Agreement on any platform or operating system for which IBM currently makes Program code available under Passport Advantage unless the Program is designated as platform or operating system specific at the time you obtain it.

1.1.3 IBM Trade-ups:

Licenses for certain Programs that replace qualifying IBM Programs may be obtained for a reduced charge. You agree to terminate your use of the replaced IBM Programs when you install the replacement Programs.

1.1.4 Competitive Trade-ups:

Licenses for certain Programs that replace qualifying Non-IBM Programs (see 1.2. Non-IBM Programs below) may be obtained for a reduced charge. You agree to terminate your use of the replaced Non-IBM Programs when you install the replacement Programs.

1.1.5 License:

IBM Programs obtained under this Agreement are governed by the terms of the IPLA. If there is a conflict between the terms of this Agreement and those of the IPLA, including its License Information document ("LI"), the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at ibm.com/software/sla.

1.2 Non-IBM Programs

License

The licensing of a Non-IBM Program obtained under this Agreement is governed by the terms of the third party end user license agreement that accompanies it. If there is a conflict between the terms of this Agreement and those of the third party end user license agreement, the terms of this Agreement prevail. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

1.3 Software Subscription and Support and Selected Support

1.3.1 Software Subscription and Support

IBM provides software subscription and support ("IBM Software Subscription and Support") with each IBM Program licensed under the IPLA. Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for Non-IBM Programs or for Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs"). Third parties may provide software subscription and support ("Third Party Software Subscription and Support") with Non-IBM Program licenses under the third parties' terms. For purposes of this Agreement, "software subscription and support" means both IBM Software Subscription and Support and Third Party Software Subscription and Support.

IBM Software Subscription and Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While IBM Software Subscription and Support is in effect for an IBM Program license:

- a. IBM will make available to you and authorize you to use the most current commercially available version, release, or update, should any be made available.
- b. IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions ("Support"). Such Support for a particular version or release of a Program is available only until IBM or the third party, as applicable, withdraws Support for that Program's version or release. When Support is withdrawn, you must upgrade to a supported version or release of the Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www-306.ibm.com/software/info/supportlifecycle/>.
- c. IBM provides assistance via telephone and, if available, electronic access, only to your information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of your IBM support center. (This assistance is not available to your end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at ibm.com/software/support.
- d. IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission.

IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) your use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

1.3.2 Selected Support

Selected Programs eligible for Selected Support are listed at www.ibm.com/lotus/PASelectSupportPrograms.

Selected Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While Selected Support is in effect for a Selected Program:

- a. IBM will make available to you Selected Program defect corrections, if any, that it develops.
- b. IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program's version, release, or modification. When such Selected Support is withdrawn, you must upgrade to a supported

version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.

- c. IBM may provide you with assistance in designing and developing applications based on your subscription level.
- d. IBM may provide assistance via telephone and electronic access, depending on your location and the subscription level you acquire. Such assistance is provided only to your information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of your IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at ibm.com/software/support.
- e. IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission.

IBM WARRANTS THAT IT PROVIDES IBM SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT USING REASONABLE CARE AND SKILL. THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not provide licenses under this Agreement for Selected Programs.

1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support

You may renew your expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE AGREEMENT TERMS AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM YOU OR THROUGH YOUR RESELLER, AS APPLICABLE, YOUR WRITTEN NOTIFICATION THAT YOU DO NOT WANT TO RENEW. YOU AGREE TO PAY SUCH RENEWAL CHARGES.

Software subscription and support or Selected Support obtained or renewed on the Anniversary is renewable for an additional coverage period of 12 full months.

Software subscription and support or Selected Support obtained on a date other than the Anniversary is renewable at the next Anniversary for an additional coverage period of less than 12 full months for a prorated charge, thereby extending the coverage to the following Anniversary.

If you choose not to renew software subscription and support coverage for certain or all of your Program licenses and, at a later date, wish to again obtain coverage for any of those Program licenses, you must obtain IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

1.3.4 Withdrawal of software subscription and support or Selected Support for a particular Program

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, you understand that

- a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and
- b. if you renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM, at its sole discretion, will either continue to provide IBM Software Subscription and Support or Selected Support to you for that Program license until the end of the then current coverage period or you may obtain a prorated refund. If you renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party will continue to provide Third Party Software Subscription and Support to you for that Non-IBM Program license until the end of the then current coverage period. Otherwise, you may obtain a prorated refund.

1.4 Fixed Term Licensing

As an option, IBM licenses certain Programs for a "Fixed Term." "Fixed Term" means that the duration of the license is the limited term so designated by IBM in the Program's PoE, beginning on the date that your order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the calendar day following the Anniversary date, as applicable.

Software Subscription and Support is included with each Fixed Term license and is in effect until the Fixed Term expires.

1.4.1 Automatic Renewal of Fixed Term Licenses

You may renew your expiring Fixed Term License by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED FOR THE SAME DURATION AS THE EXPIRING TERM UNDER THE AGREEMENT TERMS AND AT THE THEN CURRENT RENEWAL CHARGES FOR SUCH PROGRAM LICENSES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM YOU OR THROUGH YOUR RESELLER, AS APPLICABLE, YOUR WRITTEN NOTIFICATION THAT YOU DO NOT WANT TO RENEW. YOU AGREE TO PAY SUCH RENEWAL CHARGES.

If you choose not to renew the Fixed Term License, you agree to discontinue use of the Program on the expiration date.

If, after the expiration date, you choose to resume use of the Program, you must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

1.4.2 Anniversary Coordination

For Fixed Terms of six months or more only, initial or subsequent Fixed Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a prorated renewal charge, in order to extend the Fixed Term to the following Anniversary.

1.4.3 Withdrawal of Fixed Term License for a particular Program

If IBM or the third party, as applicable, withdraws Fixed Term licensing for a particular Program, you understand that:

- a. you may not renew the Fixed Term License for that Program; and
- b. if you renewed the Fixed Term License for a Program prior to the notice of withdrawal, you will, at IBM's or the third party's sole discretion, either (a) continue to use the Program under the Fixed Term licensing terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

2. Enterprise

An Enterprise includes any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with the Originating Company. The Originating Company is the legal entity that is authorized to execute and administer this Agreement on behalf of an Enterprise. The Originating Company need not be a "company" and may be the entire Enterprise.

3. Site

"Site" means any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of your Enterprise.

The Originating Company Site is defined as the "Originating Site."

Any Site that subsequently enrolls under this Agreement is defined as an "Additional Site."

In addition to acquiring Eligible Products from IBM, the Originating Site and the Additional Sites may each select a primary reseller from whom they will obtain Eligible Products. A Site may choose to replace its primary reseller at any time upon giving IBM one month's written notice.

IBM provides the primary reseller for each Site with access to complete information concerning the Site's software subscription and support renewals, including software subscription and support renewals for entitlements not originally obtained for the Site from that primary reseller.

The Customer Originating Company is responsible for all Sites' compliance with the terms of this Agreement.

4. Obtaining Eligible Products

To obtain additional authorizations to use Programs under Passport Advantage you must have already obtained the Program code.

IBM's "money-back guarantee" only applies the first time you license the IBM Program. If an IBM Program license is for a fixed term that is subject to renewal, you may obtain a refund only if you return the Program and its PoE within the first 30 days of its initial term.

Under Passport Advantage, each Eligible Product, including CEO Product Categories, is assigned Suggested Volume Price ("SVP") points.

"CEO Product Categories" (groupings of Eligible Products) are obtained on a per-user basis. You must obtain your first CEO Product Category ("Primary Product Category") for all Users within your Enterprise and for not less than the number of Users specified in the CEO Product Categories Table at ibm.com/software/passportadvantage. A "User" is an individual to whom a machine capable of copying, using, or extending the use of Programs has been assigned.

You may obtain additional CEO Product Categories if you meet the minimum number of Users requirement specified in the CEO Product Category in the CEO Product Categories Table at ibm.com/software/passportadvantage. However, you need not obtain additional CEO Product Categories for all Users within your Enterprise.

A User may use any or all of the Programs included in a chosen CEO Product Category. However, all IBM Programs that are used for client access must be obtained from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category. If IBM deletes an Eligible Product from a CEO Product Category, you may continue to use the deleted Eligible Product but you may not exceed the number of Users enrolled prior to the deletion.

Increasing the number of Users

In the event you increase the number of Users, you must obtain an authorization to use the CEO Product Category for each new User.

Decreasing the number of Users

You will notify IBM in writing prior to your next Anniversary in the event your total number of Users decreases. Decreases may result from a reorganization, restructuring, or sale of one or more of your Sites. A reduction in the number of Users of a temporary or seasonal nature does not qualify as a decrease. Following a decrease in the number of Users, a lower SVP Level may result. If the level of authorized use of a CEO Product Category drops below the minimum number of Users applicable to that CEO Category, you may not renew IBM Software Subscription and Support on a CEO Product Category basis.

5. Relationship SVP Level

The initial Relationship SVP ("RSVP") Level is established by the point value of the initial order. The initial order must be for a minimum of 500 points. If you obtain additional Eligible Products during a Term, you may attain higher RSVP Levels. The higher RSVP Level applies only when you obtain additional Eligible Products after the higher level is attained, except where the point value of an individual order by itself exceeds the point requirement for a higher SVP level. In such case, the higher SVP level applies to the order.

At the first and each subsequent Anniversary, the RSVP Level is set, based on the Eligible Products you have obtained during the previous Term. If, in a subsequent Term, the point value of the Eligible Products you obtain during that Term is less than the point value necessary to maintain the current RSVP Level, then at the next Anniversary the RSVP Level will be reduced to reflect the level at which you are currently obtaining Eligible Products but not by more than one RSVP Level.

Relationship SVP Level Table:

RSVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

6. Resellers

When you order Eligible Products from your IBM reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements. When you obtain Eligible Products from a reseller, the reseller sets the charges and payment terms.

7. Payment

- a. When you obtain Eligible Products from your IBM reseller(s), you pay your reseller directly.
- b. When you obtain Eligible Products from IBM,
 - (1) you agree to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and
 - (2) if any authority imposes a duty, tax, levy or fee (excluding those based on IBM's net income) upon Eligible Products, then you agree to pay that amount as IBM specifies or supply exemption documentation.
- c. The amount payable for a Program license may either be a one-time charge or a charge for a fixed term, depending on the type of license.

8. Mutual Responsibilities

Both of us agree that, under this Agreement:

- a. all information exchanged is non-confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement; and
- b. each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. Both of us agree that for all electronic communications, an identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.
- c. IBM grants you only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.

9. Assignment

You may not assign this Agreement in whole or in part, without IBM's prior written consent. Any attempt to do so is void. IBM will not unreasonably withhold this consent.

The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

10. Changes to the Agreement Terms

IBM may change the terms of this Agreement by giving the Customer Originating Company three months' written notice by letter or e-mail. Such change applies as of the date IBM specifies in the notice. You agree that you have consented to any such change if you do not notify IBM in writing, prior to the effective date specified in IBM's written notice, that you disagree with the change. IBM may add or withdraw Eligible Products or change an Eligible Product's SVP or point value at any time. Otherwise, for a change to be valid, both the Customer Originating Company and the IBM Originating Company must sign it. Additional or different terms in any order or written communication from you are void.

11. Agreement Termination

The Customer Originating Company may terminate this Agreement without cause on one month's written notice.

The IBM Originating Company may terminate this Agreement on three months' written notice. If you obtained or renewed IBM Software Subscription and Support for any IBM Programs prior to the notice of termination, IBM, at its sole discretion, will either continue to provide IBM Software Subscription and Support to you for those Programs until the end of the then current coverage period or give you a prorated refund. If you obtained or renewed Third Party Software Subscription and Support for any Non-IBM Programs prior to the notice of termination, the third party may continue to provide Third Party Software Subscription and Support to you for that Non-IBM Program license until the end of the then current coverage period. If the third party licensor does not do so, you may obtain a prorated refund.

The Customer Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for Eligible Products for 24 consecutive months nor have software subscription and support in effect.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

12. Geographic Scope

The terms of this Agreement apply in countries where 1) IBM markets its Eligible Products directly or 2) its Eligible Products have been announced as otherwise available.

Part 2 - Country-unique Terms

The terms of this Agreement apply for all countries except that the following terms are country amendments that replace or modify terms in Part 1 for the identified country.

AMERICAS

ANGUILLA, ANTIGUA/BARBUDA, ARUBA, BARBADOS, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, DOMINICA, GRENADA, GUYANA, ST. KITTS, ST. LUCIA, ST. MAARTEN, ST. VINCENT, TORTOLA, BELIZE, BOLIVIA, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, PANAMA, PARAGUAY, BRAZIL, MEXICO, URUGUAY, CHILE, ARGENTINA, ECUADOR, COLOMBIA, PERU, VENEZUELA, BAHAMAS, JAMAICA, NETHERLANDS ANTILLES, SURINAME, TRINIDAD & TOBAGO, TURKS & CAICOS ISLANDS, AND MONTserrat.

1. Eligible Products

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

IBM will renew, for an additional payment, expiring software subscription and support for all of your Program licenses and Selected Support for all of your Selected Program licenses to the next Anniversary if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) your payment within 30 days of your receipt of the software subscription and support or Selected Support, as applicable, invoice for the next coverage period.

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of your Program licenses for the same duration as the expiring term if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) your payment within 30 days of your receipt of the Fixed Term License invoice for the next term.

ARGENTINA, CHILE, COLOMBIA, ECUADOR, MEXICO, PERU, VENEZUELA, URUGUAY

7. Payment

The following replaces 7b(1) :

Amounts are due upon receipt of invoice and payable as IBM specifies in an Associated Document. The currency for payment of amounts due is US dollars or the equivalent in local currency as follows:

1. As long as the country operates in a free currency exchange market, you and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in an Associated Document on the date payment is made.
2. If the government of a country establishes any restriction or limitation on its free currency exchange markets, you agree to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the Associated Document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, you agree to pay the amount indicated in the Associated Document in country national currency, calculated at the official exchange rate which is in use for the remittance of dividends and net earnings to foreign investors outside the country.

You agree to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

BRAZIL

7. Payment

The following replaces 7b(1) :

Amounts due are expressed in local currency.

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in an Associated Document. You agree to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

1. two percent of the delinquent amount due per the first thirty day period during which any delinquent balance remains unpaid, plus
2. ten percent for each successive thirty day period during which any delinquent balance remains unpaid.

8. Mutual Responsibilities

The following replaces 8b:

- b. each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity;

10. Changes to the Agreement Terms

The following replaces the fourth sentence in this section:

IBM may add or withdraw Eligible Products at any time. IBM may increase SVP with notice. IBM's ability to increase such charges, rates and minimums will be subject to the requirements of Brazilian law.

MEXICO

10. Changes to the Agreement Terms

The following is added after the third sentence:

For those Eligible Products priced in Mexican currency, IBM may increase SVP by giving you fifteen days' written notice.

UNITED STATES OF AMERICA

1. Eligible Products

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

YOU MAY TERMINATE SOFTWARE SUBSCRIPTION AND SUPPORT FOR A PROGRAM OR SELECTED SUPPORT FOR A SELECTED PROGRAM LICENSE AT ANY TIME AFTER THE FIRST ANNIVERSARY ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH YOUR IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED YOUR WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW YOUR EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT OR SELECTED SUPPORT. IN SUCH EVENT, YOU MAY OBTAIN A PRORATED REFUND.

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:

YOU MAY TERMINATE A PROGRAM'S FIXED TERM LICENSE AT ANY TIME AFTER ITS INITIAL TERM ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH YOUR IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED YOUR WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW YOUR EXPIRING FIXED TERM LICENSE. IN SUCH EVENT, YOU MAY OBTAIN A PRORATED REFUND.

ASIA PACIFIC

AUSTRALIA

7. Payment

The following paragraph is added after 7b:

All charges or other amounts payable under this Agreement are specified to include applicable goods and services tax ("GST").

The following paragraph replaces 7b(2) in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on the Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, you agree to pay it when IBM invoices you. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

CAMBODIA, LAOS, PEOPLE'S REPUBLIC OF CHINA, VIETNAM, BANGLADESH, BHUTAN, NEPAL, BRUNEI, FIJI HONG KONG, INDIA, INDONESIA, JAPAN, REPUBLIC OF KOREA, MACAO, MALAYSIA, MALDIVES, MONGOLIA, BURMA (aka MYANMAR), PAPUA NEW GUINEA, PHILIPPINES, SAMOA, SOLOMON ISLANDS, SRI LANKA, TAIWAN, THAILAND, CHRISTMAS ISLANDS, COCOS (KEELING) ISLANDS, COOK ISLANDS, EAST TIMOR, HEARD & MCDONALD ISLANDS, KIRIBATI, NAURU, NIUE, NORFOLK ISLAND, TOKELAU, TONGA, AND TUVALU

1. Eligible Products

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

IBM will renew, for an additional payment, expiring software subscription and support for all of your Program licenses or Selected Support for all of your Selected Program licenses to the next Anniversary if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) your payment within 30 days of your receipt of the software subscription and support or Selected Support, as applicable, invoice for the next coverage period.

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of your Program licenses for the same duration as the expiring term if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) your payment within 30 days of your receipt of the Fixed Term License invoice for the next term.

INDONESIA

11. Agreement Termination

The following paragraph is added just prior to the last paragraph:

We both waive in this regard, the provision of article 1266 of the Indonesian Civil Code to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

JAPAN

2. Site

The following paragraph is added after the fifth paragraph of this section

In the event IBM receives personal information in conjunction with the performance of this Agreement, IBM agrees to handle such personal information in accordance with the attachment entitled Provisions for Handling Personal Information or Memorandum of Understanding on Handling Personal Information signed separately by the parties.

7. Payment

Add the following sentence:

You agree to pay within 30 days from our invoice date.

11. Agreement Termination

The following paragraph is added to this section:

When all or a substantial portion of either party's assets, credits or business are so changed as to make continued performance of that party's obligations impracticable or impossible, the other party may terminate this Agreement with prior written notice.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

EMEA-WIDE

7. Payment

The following replaces 7b(1) for the following countries except as noted:

Amounts are due and payable upon receipt of invoice. You agree to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, (or in the case of quarterly advance billing of recurring charges, within 60 days from the date of invoice), you may be subject to late payment charges.

The late payment charges are calculated as follows:

Belgium and Luxembourg:

Replace the first sentence in the second paragraph of the above EMEA-wide text with the following:

Any amounts not paid within the terms stated on the IBM invoice will be subject to a late payment fee that will be equal to 1% per period of 30 days, based on the outstanding balance VAT included, until paid in full. Late payment fees due will have to be paid at the end of each period of 30 days.

Denmark and Sweden:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

Estonia, Latvia and Lithuania:

2% per month apportioned to the number of days of delay.

Finland:

Interest according to the Act on interest rate apportioned to the number of days of delay.

France:

In compliance with the law of May 15th, 2001 any late payment fee is payable the day following the payment date specified on the invoice without any need for a reminder and its rate is equal to the European Central Bank rate for its most recent refinancing operation plus 7 points.

Germany:

Late payment fees will be calculated according to the German statutory rate.

In the second paragraph of the above EMEA-wide text replace both usages of "date of invoice" with the following:

due date

Greece:

The following replaces the above EMEA-wide text:

Amounts are due and payable upon receipt of invoice. If payment is not made within 30 days from the date of invoice, you may be subject to late payment fees.

The late payment fees will be calculated, per day of actual delay, from the due date of the invoice, based on the maximum rate of late payment fee allowed by law.

Italy:

Replace the final paragraph of the above EMEA-wide text with the following:

The late payment charges will be calculated, per day of actual delay, based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment has been received by IBM, increased by three points.

In case of no payment or partial payment and following a formal credit claim procedure or trial IBM might initiate, the late payment fee will be calculated from the due date of the invoice based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment was due, increased by three points. IBM can transfer the credit to a factoring company; if we do so we will advise you in writing.

Netherlands:

The following replaces the second and third sentences of the EMEA-wide text:

If payment is not made within 30 days from the date of invoice, you will be in default without the necessity of a default notice. In such case you will be subject to late payment fees of 1% per month.

Norway:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

South Africa, Namibia, Lesotho, Swaziland:

Such charges shall accrue daily from the date payment must have been received by IBM, and will be equal to 2% (two percent) above the ruling prime rate (of a bank designated by IBM) on any outstanding payment.

Spain:

Such fees will be calculated applying 1% of the charges per month to the number of days of delay.

UK and Ireland:

Such charges will be calculated at a monthly rate of 2% of the invoice amount, or as permitted by applicable law.

UK, Ireland, South Africa, Namibia, Lesotho, Swaziland:

Add the following:

IBM's rights relating to late payment charges shall be in addition to any other right that IBM may have in the event that you fail to make any payment due to IBM under this Agreement.

IBM reserves the right to require payment in advance of delivery or other security for payment.

ALBANIA, ARMENIA, AZERBAIJAN, BELARUS, BOSNIA-HERZEGOVINA, BULGARIA, CROATIA, GEORGIA, HUNGARY, KAZAKHSTAN, KYRGYZSTAN, MACEDONIA, MOLDOVA, MONTENEGRO, POLAND, ROMANIA, RUSSIA, SERBIA, SLOVAKIA, SLOVENIA, TAJIKISTAN, TURKMENISTAN, UKRAINE, UZBEKISTAN, JORDAN, KENYA, LEBANON, LIBERIA, PAKISTAN, SIERRA LEONE, SOMALIA, WEST BANK/GAZA, YEMEN, BAHRAIN, KUWAIT, OMAN, QATAR, SAUDI ARABIA, UNITED ARAB EMIRATES

1. Eligible Products

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

IBM will renew, for an additional payment, expiring software subscription and support for all of your Program licenses or Selected Support for all of your Selected Program licenses to the next Anniversary if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) your payment within 30 days of your receipt of the software subscription and support or Selected Support, as applicable, invoice for the next coverage period.

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of your Program licenses for the same duration as the expiring term if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) your payment within 30 days of your receipt of the Fixed Term License invoice for the next term.

AUSTRIA and GERMANY

1. Eligible Products

The second paragraph is deleted.

The following is added at the end of, and as part of, 1.2. Non-IBM Programs:

Warranty:

- (1) Warranty is provided for a period of twelve months, beginning at the date of delivery. Consumers are at least entitled to claim warranty defects within the limitation period provided by law.
- (1) IBM warrants that each non-IBM Program, when used in the specified operating environment, relates to its functions and conforms to its specifications. In case a non-IBM Program is

delivered without specifications, IBM only warrants that the non-IBM Program information correctly describes the non-IBM Program, and that the non-IBM Program can be used according to the non-IBM Program information.

- (2) IBM does not warrant uninterrupted or error-free operation of the non-IBM Program or that IBM will correct all program defects. The Customer is responsible for the results of the use of a non-IBM Program.
- (3) At IBM's discretion, warranty may also be provided by the Licensor himself.
- (4) In the event that IBM is unable to remedy a warranty defect within a reasonable period of time - even after an appropriate grace period - the Customer may in respect of this defect (at his discretion) demand a reduction of price, or rescission of contract. In case of minor defects or deviations, the Customer shall not be entitled to demand a rescission of the contract.
- (5) In addition, the limitation of liability provision will apply.
- (6) However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranty to you.

AUSTRIA

7. Payment

Replace the above EMEA-wide text in 7b(1) with the following:

Payment in full is due and payable without deduction upon receipt of invoice. You agree to pay accordingly, including any late payment fees. If the invoice amount is not received on IBM's account within 30 days, upon due date, IBM may charge late payment fees at the rate indicated in the Associated Document.

AUSTRIA, DENMARK, ESTONIA, FINLAND, LATVIA, LITHUANIA, NORWAY, SWEDEN:

7. Payment

The following is omitted in 7b(2):

(excluding those based on IBM's net income)

BELGIUM, FRANCE, UK, IRELAND, SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND:

7. Payment

Delete 7b(2).

EGYPT

8. Mutual Responsibilities

Delete 8b.

FRANCE

10. Changes to the Agreement Terms

The following is added to this section:

If you disagree with the change, you may terminate the transaction by notifying IBM, in writing, within fifteen days after the date of IBM's notification to you of the change.

All notices will be sent to the other party by registered letter.

11. Agreement Termination

The following is added after the fourth paragraph:

All notices will be sent to the other party by registered letter.

NETHERLANDS

7. Payment

Add the following paragraphs to 7b(1):

We may apply your payment to your other outstanding invoices.

Our rights relating to late payment charges shall be in addition to any other right that we may have in the event that you fail to make any payment due to us under this Agreement.

We reserve the right to also base our decision on the conclusion of an agreement with you on your solvency and to require payment in advance of delivery or other security for payment.

Your obligation to pay is unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim interruption, deferment or recoupment.

Replace 7b(2) with the following:

You agree to pay all taxes and duties, regardless of their qualification, unless specified otherwise on the invoice.

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND

7. Payment

Add the following additional sentence:

When you make payment by cheque, payment is deemed to have been made only when your cheque has been received by IBM and our relevant account has been credited by IBM's authorised bankers.

SWITZERLAND

1. Eligible Products

The following is added to 1.2. Non-IBM Programs:

No liability of whatever sort is accepted or warranty granted by IBM.

8. Mutual Responsibilities

Delete 8b.

TURKEY

7. Payment

The following replaces 7b(1)

Amounts are due and payable upon receipt of invoice. You agree to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, you may be subject to late payment charges.

Add the following to the end of this section:

You are responsible for all banking charges (including, but not limited to, LC charges, commissions, stamps, and extensions) incurred within and outside of Turkey.



International Program License Agreement

国际程序许可协议

國際程式授權合約

Mezinárodní licenční smlouva pro programy

Conditions Internationales d'Utilisation de Logiciel (IPLA)

Internationale Nutzungsbedingungen für Programmpakete

Διεθνής Σύμβαση Άδειας Χρήσης Προγράμματος

Accordo Internazionale di Licenza di Programmi (IPLA)

プログラムのご使用条件

국제 프로그램 라이선스 계약(IPLA)

Tarptautinė programos licencinė sutartis

Międzynarodowa Umowa Licencyjna na Program

Contrato Internacional de Licença de Programa

Международное Лицензионное Соглашение в отношении Программ

Mednarodna licenčna pogodba za program

Acuerdo Internacional de Programas bajo Licencia

Uluslararası Program Lisans Sözleşmesi

International Program License Agreement

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This license applies to each copy of the Program that Licensee makes.

3.1 Trade-ups, Updates, Fixes, and Patches

3.1.1 Trade-ups

If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

3.1.2 Updates, Fixes, and Patches

When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

3.2 Fixed Term Licenses

If IBM licenses the Program for a fixed term, Licensee's license is terminated at the end of the fixed term, unless Licensee and IBM agree to renew it.

3.3 Term and Termination

This Agreement is effective until terminated.

IBM may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement.

If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

4. Charges

Charges are based on Authorized Use obtained, which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If Licensee wishes to increase its Authorized Use, Licensee must notify IBM or an authorized IBM reseller in advance and pay any applicable charges.

5. Taxes

If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on IBM's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

6. Money-back Guarantee

If Licensee is dissatisfied with the Program for any reason and is the original Licensee, Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program, provided that Licensee returns the Program and PoE to the party from whom Licensee obtained it within 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

7. Program Transfer

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8.1 Limited Warranty

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If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and its PoE to the party (either IBM or its reseller) from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

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- b. SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
- c. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

11. Compliance Verification

For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (www.ibm.com/softwarepolicies/), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

11.1 Verification Process

Licensee agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.

Upon reasonable notice, IBM may verify Licensee's compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

11.2 Resolution

IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

12. Third Party Notices

The Program may include third party code that IBM, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third party code as "Modifiable Third Party Code," IBM authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

13. General

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.
- c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- d. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.
- e. Licensee authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of IBM's business relationship with Licensee.
- f. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.
- g. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- h. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
- i. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- j. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.
- k. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.
- l. The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.

14. Geographic Scope and Governing Law

14.1 Governing Law

Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

14.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

Part 2 – Country-unique Terms

For licenses granted in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

- Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction);
- Americas country amendments to other Agreement terms;
- Asia Pacific country amendments to other Agreement terms; and
- Europe, Middle East, and Africa country amendments to other Agreement terms.

Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction)

14.1 Governing Law

The phrase "the laws of the country in which Licensee obtained the Program license" in the first paragraph of 14.1 Governing Law is replaced by the following phrases in the countries below:

AMERICAS

- (1) in Canada: the laws in the Province of Ontario;
- (2) in Mexico: the federal laws of the Republic of Mexico;
- (3) in the United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines: the laws of the State of New York, United States;
- (4) in Venezuela: the laws of the Bolivarian Republic of Venezuela;

ASIA PACIFIC

- (5) in Cambodia and Laos: the laws of the State of New York, United States;
- (6) in Australia: the laws of the State or Territory in which the transaction is performed;
- (7) in Hong Kong SAR and Macau SAR: the laws of Hong Kong Special Administrative Region ("SAR");
- (8) in Taiwan: the laws of Taiwan

EUROPE, MIDDLE EAST, AND AFRICA

- (9) in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: the laws of Austria;
- (10) in Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the laws of France;
- (11) in Estonia, Latvia, and Lithuania: the laws of Finland;
- (12) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the laws of England; and

- (13) in **South Africa, Namibia, Lesotho, and Swaziland**: the laws of the Republic of South Africa.

14.2 Jurisdiction

The following paragraph pertains to jurisdiction and replaces Subsection 14.2 (Jurisdiction) as it applies for those countries identified in bold below:

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license except that in the countries identified below all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

AMERICAS

- (1) in **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires;
- (2) in **Brazil**: the court of Rio de Janeiro, RJ;
- (3) in **Chile**: the Civil Courts of Justice of Santiago;
- (4) in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);
- (5) in **Mexico**: the courts located in Mexico City, Federal District;
- (6) in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;
- (7) in **Uruguay**: the courts of the city of Montevideo;
- (8) in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

EUROPE, MIDDLE EAST, AND AFRICA

- (9) in **Austria**: the court of law in Vienna, Austria (Inner-City);
- (10) in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the Commercial Court of Paris;
- (11) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the English courts;
- (12) in **South Africa, Namibia, Lesotho, and Swaziland**: the High Court in Johannesburg;
- (13) in **Greece**: the competent court of Athens;
- (14) in **Israel**: the courts of Tel Aviv-Jaffa;
- (15) in **Italy**: the courts of Milan;
- (16) in **Portugal**: the courts of Lisbon;
- (17) in **Spain**: the courts of Madrid; and
- (18) in **Turkey**: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.

14.3 Arbitration

The following paragraph is added as a new Subsection 14.3 (Arbitration) as it applies for those countries identified in bold below. The provisions of this Subsection 14.3 prevail over those of Subsection 14.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:

ASIA PACIFIC

(1) In Cambodia, India, Indonesia, Laos, Philippines, and Vietnam:

Disputes arising out of or in connection with this Agreement will be finally settled by arbitration which will be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award will be final and binding for the parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed. All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

(2) In the People's Republic of China:

In case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on both parties. During the course of arbitration, this agreement will continue to be performed except for the part which the parties are disputing and which is undergoing arbitration.

EUROPE, MIDDLE EAST, AND AFRICA

(3) In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:

All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

(4) In Estonia, Latvia, and Lithuania:

All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly

appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AMERICAS COUNTRY AMENDMENTS

CANADA

10.1 Items for Which IBM May be Liable

The following replaces Item 1 in the first paragraph of this Subsection 10.1 (Items for Which IBM May be Liable):

1) damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence; and

13. General

The following replaces Item 13.d:

- d. Licensee agrees to comply with all applicable export and import laws and regulations, including those of that apply to goods of United States origin and that prohibit or limit export for certain uses or to certain users.

The following replaces Item 13.i:

- i. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Licensee except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

The following is added as Item 13.m:

- m. For purposes of this Item 13.m, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:

(1) General

- (a) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").
- (b) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

(2) Security Safeguards

- (a) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.
- (b) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
- (c) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
- (d) Additional or different services required to comply with the Laws will be deemed a request for new services.

(3) Use

Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.

(4) Access Requests

- (a) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
- (b) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
- (c) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

(5) Retention

Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

(6) Public Bodies Who Are Subject to Public Sector Privacy Legislation

For Customers who are public bodies subject to public sector privacy legislation, this Item 13.m applies only to Personal Data made available to Customer in connection with this Agreement, and the obligations in this section apply only to Customer, except that: 1) section (2)(a) applies only to IBM; 2) sections (1)(a) and (4)(a) apply to both parties; and 3) section (4)(b) and the last sentence in (1)(b) do not apply.

PERU

10. Limitation of Liability

The following is added to the end of this Section 10 (Limitation of Liability):

Except as expressly required by law without the possibility of contractual waiver, Licensee and IBM intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action.

10.1 Items for Which IBM May be Liable

The following is added at the end of this Subsection 10.1:

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA:

5. Taxes

The following is added at the end of this Section 5 (Taxes)

For Programs delivered electronically in the United States for which Licensee claims a state sales and use tax exemption, Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

Licensee agrees to be responsible for any sales and use tax liabilities that may arise as a result of Licensee's subsequent redistribution of Programs after delivery by IBM.

13. General

The following is added to Section 13 as Item 13.m:

U.S. Government Users Restricted Rights – Use, duplication or disclosure is restricted by the GSA IT Schedule 70 Contract with the IBM Corporation.

The following is added to Item 13.f:

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA:

5. Taxes

The following sentences replace the first two sentences of Section 5 (Taxes):

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Program itself, that is not otherwise provided for in the amount payable, Licensee agrees to pay it when IBM invoices Licensee. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

8.1 Limited Warranty

The following is added to Subsection 8.1 (Limited Warranty):

The warranties specified this Section are in addition to any rights Licensee may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

10.1 Items for Which IBM May be Liable

The following is added to Subsection 10.1 (Items for Which IBM Maybe Liable):

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily obtained for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

HONG KONG SAR, MACAU SAR, AND TAIWAN

As applies to licenses obtained in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, "the country in which the original Licensee was granted the license" and "the country in which Licensee obtained the Program license") are replaced with the following:

- (1) In Hong Kong SAR: "Hong Kong SAR"
- (2) In Macau SAR: "Macau SAR" except in the Governing Law clause (Section 14.1)
- (3) In Taiwan: "Taiwan."

INDIA

10.1 Items for Which IBM May be Liable

The following replaces the terms of Items 1 and 2 of the first paragraph:

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by Licensee for the individual Program that is the subject of the claim.

13. General

The following replaces the terms of Item 13.g:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

INDONESIA

3.3 Term and Termination

The following is added to the last paragraph:

Both parties waive the provision of article 1266 of the Indonesian Civil Code, to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

JAPAN

13. General

The following is inserted after Item 13.f:

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA

10.2 Items for Which IBM Is not Liable

The word "SPECIAL" in Item 10.2b is deleted.

NEW ZEALAND

8.1 Limited Warranty

The following is added:

The warranties specified in this Section are in addition to any rights Licensee may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if Licensee requires the goods for the purposes of a business as defined in that Act.

10. Limitation of Liability

The following is added:

Where Programs are not obtained for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA

4. Charges

The following is added:

All banking charges incurred in the People's Republic of China will be borne by Licensee and those incurred outside the People's Republic of China will be borne by IBM.

PHILIPPINES

10.2 Items for Which IBM Is not Liable

The following replaces the terms of Item 10.2b:

- b. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

SINGAPORE

10.2 Items for Which IBM Is not Liable

The words "SPECIAL" and "ECONOMIC" are deleted from Item 10.2b.

13. General

The following replaces the terms of Item 13.i:

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 10 above (Limitation of Liability), a person who is not a party to this Agreement will have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

TAIWAN

8.1 Limited Warranty

The last paragraph is deleted.

10.1 Items for Which IBM May Be Liable

The following sentences are deleted:

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

EUROPEAN UNION MEMBER STATES

8. Warranty and Exclusions

The following is added to Section 8 (Warranty and Exclusion):

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 8 Warranty and Exclusions. The territorial scope of the Limited Warranty is worldwide.

EU MEMBER STATES AND THE COUNTRIES IDENTIFIED BELOW

Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.

13. General

The following replaces Item 13.e:

- (1) **Definitions** – For the purposes of this Item 13.e, the following additional definitions apply:
 - (a) **Business Contact Information** – business-related contact information disclosed by Licensee to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Licensee's employees and contractors. For Austria, Italy and Switzerland, Business Contact Information also includes information about Customer and its contractors as legal entities (for example, Customer's revenue data and other transactional information)
 - (b) **Business Contact Personnel** – Licensee employees and contractors to whom the Business Contact Information relates.
 - (c) **Data Protection Authority** – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.
 - (d) **Data Protection & Electronic Communications Legislation** – (i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or (ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.
 - (e) **IBM Group** – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.
- (2) Licensee authorises IBM:
 - (a) to process and use Business Contact Information within IBM Group in support of Licensee including the provision of support services, and for the purpose of furthering the business relationship between Licensee and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the "Specified Purpose"); and
 - (b) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.
- (3) **Use**

IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.
- (4) **Access Requests**

To the extent required by the Data Protection & Electronic Communications Legislation, Licensee represents that (a) it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.

(5) Retention

Licensee authorises IBM to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

AUSTRIA

8.2 Exclusions

The following is deleted from the first paragraph:

MERCHANTABILITY, SATISFACTORY QUALITY

10. Limitation of Liability

The following is added:

The following limitations and exclusions of IBM's liability do not apply for damages caused by gross negligence or willful misconduct.

10.1 Items for Which IBM May Be Liable

The following replaces the first sentence in the first paragraph:

Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM.

In the second sentence of the first paragraph, delete entirely the parenthetical phrase:

"(including fundamental breach, negligence, misrepresentation, or other contract or tort claim)".

10.2 Items for Which IBM Is Not Liable

The following replaces Item 10.2b:

- b. indirect damages or consequential damages; or

BELGIUM, FRANCE, ITALY, and LUXEMBOURG

10. Limitation of Liability

The following replaces the terms of Section 10 (Limitation of Liability) in its entirety:

Except as otherwise provided by mandatory law:

10.1 Items for Which IBM May Be Liable

IBM's entire liability for all claims in the aggregate for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Agreement or due to any other cause related to this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that has caused the damages.

The above limitation will not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

10.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM OR ANY OF ITS PROGRAM DEVELOPERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; AND / OR 3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES.

10.3 Suppliers and Program Developers

The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers are collectively responsible.

GERMANY

8.1 Limited Warranty

The following is inserted at the beginning of Section 8.1:

The Warranty Period is twelve months from the date of delivery of the Program to the original Licensee.

8.2 Exclusions

Section 8.2 is deleted in its entirety and replaced with the following:

Section 8.1 defines IBM's entire warranty obligations to Licensee except as otherwise required by applicable statutory law.

10. Limitation of Liability

The following replaces the Limitation of Liability section in its entirety:

- a. IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.
- b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM will be liable, regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Program is subject to fixed term charges, up to 12 months' charges) Licensee paid for the Program that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.
- c. In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.
- d. In case of delay on IBM's part: 1) IBM will pay to Licensee an amount not exceeding the loss or damage caused by IBM's delay and 2) IBM will be liable only in respect of the resulting damages that Licensee suffers, subject to the provisions of Items a and b above.

13. General

The following replaces the provisions of 13.g:

Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 8.1 (Limited Warranty) of this Agreement.

The following replaces the provisions of 13.i:

No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except (to the extent permitted in Section 10 (Limitation of Liability)) for: i) bodily injury (including death); or ii) damage to real or tangible personal property for which (in either case) IBM is legally liable to that third party.

IRELAND

8.2 Exclusions

The following paragraph is added:

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

IRELAND AND UNITED KINGDOM

2. Agreement Structure

The following sentence is added:

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.

10.1 Items for Which IBM May Be Liable

The following replaces the first paragraph of the Subsection:

For the purposes of this section, a "Default" means any act, statement, omission or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to Licensee, whether in contract or in tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM and except as expressly required by law without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by Licensee as an immediate and direct consequence of the default, up to the greater of (1) 500,000 euro (or the equivalent in local currency) or (2) 125% of the charges (if the Program is subject to fixed term charges, up to 12 months' charges) for the Program that is the subject of the claim. Notwithstanding the foregoing, the amount of any damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable is not subject to such limitation.

10.2 Items for Which IBM is Not Liable

The following replaces Items 10.2b and 10.2c:

- b. special, incidental, exemplary, or indirect damages or consequential damages; or
- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

Miami-Dade County ITD
C/N 2323414

IBM System z Software Budget Estimate: January 2010
25-Jun-09

Prepared by: Ed Henderson and Jim Gresham
Leafe & Associates, Inc.

Monthly Charges:		Proposed Configuration		2008-P03		2008-P03		2008-P03		2008-P03		2008-P03	
Product Number	Product Name	End of Service	TLMSUs	BU	RU	BF	RP	Monthly Price	Comments	Monthly Price	Comments	Monthly Price	Comments
5623DB2	DB2 UDB for z/OS V8												
5648063	ACF/NCP V7.7 (CCL)												
5648141	NTuneMon V2.6 w/ Tuning feature												
5655G53	Enterprise COBOL for z/OS V3.4												
5655S71	Enterprise COBOL for z/OS V4.1												
5655L82	WebSphere MQ for z/OS V6.0												
5655R36	WebSphere MQ for z/OS V7.0												
5655M15	CICS TS z/OS V3.1												
5655M32	PSF V4 for z/OS												
5655M32	PSF V4 Enhanced ACIF												
5655R44	Debug Tool V7												
5655S17	Debug Tool V8												
5655041	ACF/SSP V4.6 MVS												
5668985	Host Command Facility V2.1												
5675DB2	DB2 UDB for z/OS V7												
5688190	PPEA/370												
5688191	OGL/370												
5688216	IBM SAA AD/Cycle C/370 V1.2												
5694A01	z/OS V1.9 Base												
5694A01	z/OS V1.9 C/C++ without Debug												
5694A01	z/OS V1.9 DFSMS dashm												
5694A01	z/OS V1.9 DFSMS rmm												
5694A01	z/OS V1.9 DFSORT												
5694A01	z/OS V1.9 GDDM-PGF												
5694A01	z/OS V1.9 GDDM-REXX												
5694A01	z/OS V1.9 HCM												
5694A01	z/OS V1.9 RMF												
5694A01	z/OS V1.9 SDSF												
5694A01	z/OS V1.9 Security Server												
5695014	IBM Library for REXX/370 V1.4												
5697ENV	Tivoli NetView for z/OS V5.3												
5715XXXB	Emulation Program Version R14												
5696ARE	3800 90 Degree Print Program												
5696AWE	Page Formatting Services 3800												
5798CPR	Generalized Perform Analysis Rep												
5798CQQ	GTFPar Gen Trace Fac Analys												
Monthly License Charge:										\$156,218			
x Number months										12			
Sub-total Monthly Charges:										\$1,874,616			

Miami-Dade County ITD
C/N 2323414

IBM System z Software Budget Estimate: January 2010

25-Jun-09

Annualized Monthly Charge Estimate for 2009:

\$1,874,616



IBM System z Software Budget Estimate: January 2010
25-Jun-09

Annual Support Charges:		Proposed Configuration		Current		Metric	Annual Charge
Product Number	Product Name	S/N 89DCE	S/N 89DBE	MSU Reg.	MSU Reg.		
5648D08	DB2 Utilities Suite V7 S&S	BI	BI	156 MSUs	90 VU		\$10,710
5655F81	WebSphere AS V6.1.0 S&S	BI	BI	78 MSUs	34 VU		\$16,116
5655P06	CL/Supersession for z/OS S&S	BI	BI	78 MSUs	35 VU		\$11,025
5655T03	Tivoli zSecure Admin V1.9 S&S	BI	BI	156 MSUs	19 VU		N/A ***
5655T04	Tivoli zSecure Audit for RACF V1.9 S&S	BI	BI	156 MSUs	19 VU		N/A ***
5655T08	Tivoli zSecure Command Verifier V1.9 S&S	BI	BI	156 MSUs	19 VU		N/A ***
5698S45	Tivoli Storage Manager EE V5.4 S&S	BI	BI	78 MSUs	34 VU		Declined S&S
5698S51	Tivoli Workload Scheduler V6.3 S&S	BI	BI	156 MSUs	19 VU		\$60,325
5698S74	Omegamon XE CICS V4 S&S	BI	BI	156 MSUs	63 VU		\$18,900
5698S76	Omegamon XE z/OS V4 S&S	BI	BI	156 MSUs	63 VU		\$37,800
5698R06	Omegamon XE MF Networks V4 S&S	BI	BI	156 MSUs	62 VU		\$17,484
5698S48	Tivoli Decision Support (TDS) Base ****	BI	BI	156 MSUs	19 VU		\$17,100
5741SNS	Tivoli System Automation V3.1 S&S	BI	BI	156 MSUs	19 VU		\$48,450
5655H80	z/VM V5.2 S&S (Base, DirMaint, PRF)	BI	BI	4 engines	39 VU		\$24,063
	Content Manager OnDemand V1 S&S	BI	BI	78 MSUs	1 Server		\$35,250
	(Obj: Server, Enable Kit, Lib Server, Dist. Fac.)						
Annual Charge Estimate:							\$297,223

Total IBM Budget Estimate for 2009: \$2,171,839.00

Total including UAP and Inspector General fees: \$2,221,830.18

PLEASE NOTE:

- * Indicates Projected End of Service Date. Actual dates have not yet been announced.
- *** The terms for licensing the zSecure programs are covered by a separate IBM contract and pricing is not applicable for this estimate.
- **** Former CIMS program.

PSLC	BP, RP	Parallel Sysplex License Charges
IPLA	BI	International Program License Agreement
IPLA	S&S	Subscription and Support
FLAT	BF, DF	Flat
ULC	BU, RU	Usage License Charge
QTY	Q	Quantity
USTR	BT, DT	Usage Tiered
LVTR	BL, DL	Level Tiered
SVC	SVC	Single Version Charge (12 month limit)
Gratis	G	Gratis (fees waived)

B = Basic; D = DSLO; R = Registration

These stated prices are for your information only and are subject to change. Applicable taxes are not shown. Licensed Programs are available only under the IBM Customer Agreement, International Program License Agreement, or any equivalent agreement in effect between the customer and IBM.



International Business Machines Corporation
International Business Machines Corporation, PO Box 6980, Ardenwood, CA 94003-6980

Software Subscription and Support Renewal Detail Information Form - Quotation Number: 35335699

Passport Advantage Customer: Passport Advantage Agreement Number: 7517
Passport Advantage Site Number: 7163424
IBM Customer Number: 3333706
Mami Dado County
Relationship SVP Level: 3
Anniversary: 01-July
Quotation SVP Level: 3
Renewal Date: 01-July-2009

Item	Part Number	Quantity	Unit Pts.	Total Pts.	Coverage Dates	Months	Price	Extended SVP Amt.
IBM Lotus Quickr Authorized User Annual SW Subscription & Support Renewal								
1	E03WJLL	500	0.07	35.00	7/1/2009 6/30/2010	12	11.70	5,850.00
IBM Lotus Sametime Standard Authorized User Annual SW Subscription & Support Renewal 12 Months								
2	E1CT5LL	500	0.06	30.00	7/1/2009 6/30/2010	12	11.14	5,570.00
IBM WebSphere Portal Extend Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
3	E023RLL	1,600	1.29	2064.00	7/1/2009 6/30/2010	12	232.40	371,840.00
IBM Communication Controller Linux on System z Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
4	E0201LL	100	0.40	40.00	7/1/2009 6/30/2010	12	70.84	7,084.00
IBM DB2 Enterprise Server Edition Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
5	E020CCL	600	0.36	216.00	7/1/2009 6/30/2010	12	64.48	38,688.00
IBM Content Manager OnDemand Authorized User Value Unit SW Subscription & Support Renewal								
6	E066NLL	320	0.56	179.20	7/1/2009 6/30/2010	12	99.50	31,840.00
IBM Rational HIS for Multiplatforms, Authorized User SW Subscription & Support Renewal								
7	E055DLL	4,000	0.31	1240.00	7/1/2009 6/30/2010	12	55.72	222,880.00
IBM WebSphere Service Registry and Repository Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
8	E03YFLL	600	0.50	300.00	9/1/2009 6/30/2010	10	74.33	44,598.00
IBM WebSphere Message Broker with Rules and Formatter Extension Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
9	E025ALL	600	1.10	660.00	7/1/2009 6/30/2010	12	197.40	118,440.00
IBM WebSphere Application Server Network Deployment Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
10	E025SLL	1,700	0.15	255.00	7/1/2009 6/30/2010	12	27.66	47,022.00
IBM WebSphere Business Modeler Advanced User Annual SW Maintenance Renewal								
11	E01B1LL	1	9.51	9.51	9/1/2009 6/30/2010	10	1419.16	1,419.16
IBM WebSphere Commerce Developer Professional Authorized User Annual SW Subscription & Support Renewal								

12 E01BCLL	2	18.40	36.80	9/1/2009	6/30/2010	10	2745.82	5,491.64
IBM WebSphere Commerce Professional Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
13 E025MLL	500	0.98	490.00	7/1/2009	6/30/2010	12	175.10	87,550.00
IBM WebSphere Everyplace Mobile Device Enable Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
14 E0266LL	100	0.02	2.00	7/1/2009	6/30/2010	12	4.42	442.00
IBM WebSphere Everyplace Mobile Portal Enable Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
15 E0265LL	100	0.54	54.00	7/1/2009	6/30/2010	12	97.10	9,710.00
IBM WebSphere Integration Developer Authorized User Annual SW Subscription & Support Renewal								
16 E01UDLL	13	3.47	45.11	7/1/2009	6/30/2010	12	620.90	8,071.70
IBM WebSphere MQ Workflow Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
17 E0253LL	600	0.83	498.00	7/1/2009	6/30/2010	12	148.10	88,860.00
IBM WebSphere Process Server , Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
18 E02ECLL	600	0.84	504.00	9/1/2009	6/30/2010	10	125.33	75,198.00
IBM WebSphere Voice Response for AIX Port Annual SW Subscription & Support Renewal 12 Months								
19 E00A7LL	96	1.48	142.08	7/1/2009	6/30/2009	12	265.90	25,526.40
20 E00A7LL	72	1.48	106.56	9/1/2009	6/30/2010	10	221.58	15,953.76
Subtotal	168							41,480.16
IBM WebSphere Voice Server Port Annual SW Subscription & Support Renewal								
21 E01KTLL	700	0.78	546.00	7/1/2009	6/30/2010	12	139.30	97,510.00
IBM WebSphere Voice Server Spanish Concatenative Text-To-Speech Port Annual SW Subscription & Support Renewal								
22 E01K8LL	700	0.21	147.00	7/1/2009	6/30/2010	12	37.21	26,047.00
IBM WebSphere Voice Server Spanish Language Support Port Annual SW Subscription & Support Renewal								
23 E01KBLL	700	0.16	112.00	7/1/2009	6/30/2010	12	28.06	19,642.00
IBM WebSphere Voice Server U.S. English Concatenative Text-to-Speech Port Annual SW Subscription & Support Renewal								
24 E01KKLL	700	0.21	147.00	7/1/2009	6/30/2010	12	37.21	26,047.00
IBM WebSphere Voice Server U.S. English Language Support Port Annual SW Subscription & Support Renewal								
25 E01KGLL	700	0.16	112.00	7/1/2009	6/30/2010	12	28.06	19,642.00
IBM XL C/C++ for AIX Authorized User Annual SW Maintenance Renewal								
26 E1AHNLL	3	3.17	9.51	7/1/2009	6/30/2010	12	568.30	1,704.90
IBM Tivoli Business Service Manager Install Annual SW Subscription & Support Renewal								
27 E03TVLL	1	53.3	53.30	7/1/2009	6/30/2010	12	9,552.00	9,552.00
IBM Tivoli Change and Configuration Management Database Install Annual SW Subscription & Support Renewal								
28 E02HWLL	1	74.2	74.20	7/1/2009	6/30/2010	12	13,293.00	13,293.00
IBM Tivoli Change and Configuration Management Database Resource Value Unit SW Subscription & Support Renewal								
29 E02HXLL	3,008	0.02	60.16	7/1/2009	6/30/2010	12	3.98	11,971.84
30 E02HXLL	12,400	0.02	248.00	9/1/2009	6/30/2010	10	3.32	41,168.00
Subtotal	15,408							53,139.84

[illegible]

48 E01MJLL	65	3.96	257.40	7/1/2009	6/30/2010	12	708.40	46,046.00
IBM Tivoli Netcool/OMNIBus Gateway Tier 2 per Application Instance Annual SW Subscription & Support Renewal								
49 E03S3LL	2	44.40	88.80	7/1/2009	6/30/2010	12	7,944.00	15,888.00
IBM Tivoli Access Manager for e-business (OLD) VU Value Unit SW Subscription & Support Renewal								
50 E0170LL	10,000	0.03	300.00	7/1/2009	6/30/2010	12	6.09	60,900.00
IBM Tivoli Composite Application Manager for SOA Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
51 E02DFLL	2,000	0.05	100.00	9/1/2009	6/30/2010	10	7.40	14,800.00
IBM Tivoli Composite Application Manager for WebSphere Processor Value Unit (PVU) Annual SW Subscription & Support Renewal								
52 E02DLLL	3,300	0.10	330.00	9/1/2009	6/30/2010	10	15.12	49,896.00
IBM Tivoli Netcool/OMNIBus Gateway Tier 1 3rd Party per Connection Annual SW Subscription & Support Renewal								
53 E03S4LL	2	22.40	44.80	9/1/2009	6/30/2010	10	3,343.32	6,686.64
IBM Tivoli Netcool/OMNIBus Base per Install Annual SW Subscription & Support Renewal								
54 E03RMLL	2	48.90	97.80	7/1/2009	6/30/2010	12	8,756.00	17,512.00
IBM Tivoli Netcool/OMNIBus Probe Tier 1 per Resource Value Unit Annual SW Subscription & Support Renewal								
55 E03RNLL	200	0.06	12.00	7/1/2009	6/30/2010	12	10.03	2,006.00
56 E03RNLL	1,046	0.06	62.76	9/1/2009	6/30/2010	10	8.36	8,744.56
Subtotal	1,246							10,750.56
IBM Tivoli Netcool/Webtop Concurrent User Annual SW Subscription & Support Renewal								
57 E03U3LL	5	4.67	23.35	7/1/2009	6/30/2010	12	836.00	4,180.00
IBM Tivoli Netcool/Webtop per Install Annual SW Subscription & Support Renewal								
58 E03RILL	2	0.93	1.86	7/1/2009	6/30/2010	12	167.20	334.40
Total in USD								2,118,520.83

Product/Part Replacement Information Footnote(s)

Current quoted product replaces purchased product (purchased part, purchased qty) on effective replacement date
 (A1) ITCAM for App 3 Ag Pack PVU (E04V8LL) replaces Tiv Monit Databases 10 VU (E027ZLL , 1,000) effective 07/08/2008
 (B1) ITCAM Transactns Web Robotc R&T PVU (E04KJLL) replaces Tiv Monit Transac Perf Valu Unit (D562MLL , 2,200) effective 05/16/2

Software Subscription and Support Renewal Detail Information Form - Quotation Number: 25835099

